

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MATTHEW SILVA,

Plaintiff,

v.

RICHARD McDERMOTT, *et al.*,

Defendants.

No. C07-1278JCC

ORDER

This matter comes before the Court under Local General Rule 8(c). Plaintiff has filed a “Motion for Relief from Judgment with Request for Disqualification of Judge Coughenour and Magistrate Donohue.” Dkt. # 10. The Honorable John C. Coughenour, United States District Judge, declined to recuse himself voluntarily and that portion of plaintiff’s motion was referred to the Chief Judge for review. Dkt. # 12. Plaintiff’s motion is therefore ripe for review by this Court.

Section 455 of title 28 of the United States Code governs the disqualification of a district judge. It states in relevant part: “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge

ORDER

1 shall proceed no further therein, but another judge shall be assigned to hear such
2 proceeding. The affidavit shall state the facts and the reasons for the belief that
3 bias or prejudice exists.

4 A judge must recuse himself if a reasonable person would believe that he is unable to be
5 impartial. Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir. 1993). This is an
6 objective inquiry regarding whether there is an appearance of bias, not whether there is bias in
7 fact. Preston v. United States, 923 F.2d 731, 734 (9th Cir. 1992); United States v. Conforte, 624
8 F.2d 869, 881 (9th Cir. 1980); See also In Liteky v. United States, 510 U.S. 540 (1994)
9 (explaining the narrow bases for recusal).

10 A litigant may not, however, use the recusal process to remove a judge based on
11 adverse rulings in the pending case: the alleged bias must result from an extrajudicial source.
12 United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986).¹ Plaintiff argues that certain orders
13 issued by the presiding judicial officers, including the order of dismissal and an order denying
14 plaintiff's motion to recuse, show that they have a bias against plaintiff. Plaintiff does not
15 identify any extrajudicial source of the alleged prejudice: the only evidence of bias presented is
16 the earlier decisions. In such circumstances, the risk that the litigant is using the recusal motions
17 for strategic purposes is considerable. See Ex Parte American Steel Barrel Co. and Seaman, 230
18 U.S. 35, 44 (1913). Because a judge's conduct in the context of judicial proceedings does not
19 constitute the requisite bias under 28 U.S.C. § 144 or § 455 if it is prompted solely by
20 information that the judge received in the context of the performance of his duties as the
21 presiding judicial officer, plaintiff has not met his burden of showing an appearance of bias.

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25 ¹ Objections to a judge's decisions are properly raised through an appeal, not a motion to recuse.
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Mr S Casnik

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